

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1800.

No. 781 *see 95.*

THE LAKE SHORE AND MICHIGAN SOUTHERN RAIL-
WAY COMPANY, PLAINTIFF IN ERROR.

142.

THE STATE OF OHIO EX REL. GEORGE L. LAWRENCE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED APRIL 17, 1807.

(16,560.)

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(16,560.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 781.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO EX REL. GEORGE L. LAWRENCE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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1

In Supreme Court of United States.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error, Assignment of Errors.
vs.
 THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error.

Now comes the said The Lake Shore and Michigan Southern Railway Company, plaintiff in error, and for an assignment of errors herein says that at the April term, 1893, of the common pleas court of Cuyahoga county, Ohio, in a certain cause therein pending, wherein said State of Ohio *ex rel.* Geo. L. Lawrence was plaintiff and the said The Lake Shore and Michigan Southern Railway Company was defendant, a judgment was entered in favor of the plaintiff and against the defendant for the sum of one hundred dollars and costs of suit.

That at the January term, 1894, of the circuit court of Cuyahoga county, Ohio, said judgment was affirmed, and at the January term, 1897, of the supreme court of said State of Ohio, which is the highest court of law and equity in said State in which a decision of said cause can be had, said judgment was affirmed, all of which will more fully appear by an authenticated transcript of the record in said case filed herewith.

That in the rendering of said judgment by said court of common pleas and said judgments of affirmance by the said circuit and supreme courts error intervened, to the prejudice of this plaintiff in error, as will appear by said record, and that among the errors so intervening are the following:

1st. The rendering of said judgment and of the affirmances thereof was an interference with and a violation of paragraph 3, section 8, article 1, of the Constitution of the United States, as to the regulation of commerce between the several States, and
 2 the statute of the State of Ohio on which said judgment was based and which was upheld by said judgment and the affirmances thereof, to wit, sec. 3320 of the Revised Statutes of Ohio, as amended April 13th, 1889, Ohio Laws, vol. 86, page 291, was and is repugnant to and an interference with and in violation of said provision of the Constitution of the United States, and said statute and the enforcement thereof by and through the said judgment of the courts of the State are an exercise by the State of the power to regulate commerce between the States.

2nd. The statute above referred to was by the said courts of Ohio construed and held to apply to trains of plaintiff in error which were engaged in interstate commerce, and the penalty imposed by the statute was inflicted upon plaintiff in error for failure to comply with said statute and stop a train which was engaged in interstate commerce.

The power and authority to regulate, control, or place any

burden upon such commerce being solely vested in the Congress of the United States by the aforesaid provision of the Constitution, the said statute as so construed by said courts is repugnant to and a violation of said constitutional provision.

3rd. Said judgment of affirmance rendered by said supreme court was and is erroneous, contrary to and without authority of law, and in violation and contravention of the Constitution of the United States.

4th. Other errors apparent upon the record.

The plaintiff in error prays that said judgment may be reversed.

GEORGE C. GREENE,
Attorney for Plff in Error.

3 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition in the judgment of a plea which is in the supreme court of Ohio, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The Lake Shore and Michigan Southern Railway Company, plaintiff in error, and The State of Ohio *ex rel.* George L. Lawrence, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error has happened, to the great damage of said plaintiff in error, as by its complaint appears,

we, being willing that error, if any hath been, should be duly

4 corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 24th day of March, A. D. 1897.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk*,
By JNO. VAN NOSTRAN,
Deputy Clerk.

Allowed by me with a supersedeas.

JACOB F. BURKET,

Chief Justice of the Supreme Court of the State of Ohio.

5 [Endorsed:] Filed Mar. 25, 1897, in supreme court of Ohio. J. B. Allen, clerk.

6 STATE OF OHIO, } 88:
 City of Columbus, }

To the honorable Supreme Court of the United States:

Pursuant to the command of your within writ of error directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named, in a certain authenticated transcript to this writ attached, do send as within commanded.

In witness whereof I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, have set my hand and seal of said court this 25th day of March, 1897.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By — — —, *Deputy Clerk.*

7 UNITED STATES OF AMERICA, 88:

To the State of Ohio *ex rel.* George L. Lawrence, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Ohio, wherein The Lake Shore and Michigan Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered by said State court against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jacob F. Burket, chief justice of the supreme court of Ohio, this 23d day of March, 1897.

JACOB F. BURKET,
Chief Justice of the Supreme Court of Ohio.

We hereby acknowledge service of a copy of the above citation this 24th day of March, 1897.

W. H. POLHAMUS,
Att'y for Def't in Error.

4 LAKE SHORE & MICHIGAN SOUTHERN RAILWAY CO. VS.

8 [Endorsed:] Filed Mar. 25, 1897, in supreme court of Ohio.
J. B. Allen, clerk.

9 Supreme Court of Ohio.

STATE OF OHIO, }
Franklin County, } ss:

I, Josiah B. Allen, clerk of said supreme court, do hereby certify that Jacob F. Burkett, whose genuine signature is affixed to and who executed the foregoing citation, was at the time of its execution the chief justice of said court, duly elected and qualified to said office according to law.

Witness my hand and the seal of said court hereto affixed, at Columbus, Ohio, this 25th day of March, A. D. 1897.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

10 In Supreme Court of Ohio.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error, }
vs. }
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error. }
Supersedas Bond.

Know all men by these presents that we, The Lake Shore and Michigan Southern Railway Company, Addison Hills, and O. G. Getzen-Danner, citizens of the State of Ohio, are held and firmly bound unto the State of Ohio in the full and just sum of one thousand dollars; for the payment of which, well and truly to be made, we do jointly and severally bind ourselves, our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 23d day of March, 1897.

Whereas, on the 2d day of March, 1897, in a suit pending in the supreme court of Ohio between the said The Lake Shore & Michigan Southern Railway Company, plaintiff in error, and The State of Ohio *ex rel.* George L. Lawrence, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error has obtained a writ of error and filed a copy thereof in the office of the clerk of said court to reverse the judgment in said suit, and has caused a citation to be issued, directed to said 11 defendant in error, citing and admonishing said defendant to be and appear at a term of the Supreme Court of the United States, to be held at Washington, on the second Monday in October next:

Now, the condition of this obligation if such that if the said The Lake Shore & Michigan Southern Railway Company shall prosecute its writ of error to effect and answer all damages and costs if it

fail to make good its plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE LAKE SHORE AND MICHIGAN
SOUTHERN RAILWAY COMPANY,
By W. H. CANNIFF, *General Manager.*
ADDISON HILLS.
O. G. GETZEN-DANNER. [SEAL.] [SEAL.]

Attest: N. BARTLETT,
Ass't Secretary.

[Seal Lake Shore & Michigan Southern Railway Co.]

Approved by—
HARRY L. VAIL,
Clerk Court Common Pleas.

[Seal Common Pleas Court of the County of Cuyahoga, Ohio.]

Filed Mar. 25, 1897, in supreme court of Ohio.

J. B. ALLEN, *Clerk.*

12 [Endorsed :] 4013. L. S. & M. S. R'y Co. *vs.* State of Ohio
ex rel. Geo. L. Lawrence. Supersedeas bond.

13 Supreme Court of Ohio.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY }
COMPANY, Plaintiff in Error,
vs.
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error. } Notice.

To the honorable judges of the court of common pleas of Cuyahoga county, Ohio, Greeting:

Whereas a certain cause was lately pending in your court wherein the above-named plaintiff in error was plaintiff and the above-named defendant in error was defendant, and in which judgment was rendered in favor of the defendant and against the plaintiff for the sum of one hundred dollars and costs, which judgment was subsequently affirmed on petition in error to this court; and whereas the above-named plaintiff in error has obtained the allowance by the Honorable Jacob F. Burket, chief justice of the supreme court of Ohio, of a writ of error to the United States Supreme Court, with supersedias, which has been transmitted to and received by our said supreme court of Ohio:

Now, this is to inform you that, in pursuance of said allowance of said writ of error, with supersedias, said The Lake Shore and Michigan Southern Railway Company has given bond, with surety, for such supersedias in the sum of one thousand dollars, conditioned that it, the said The Lake Shore and Michigan Southern Railway Company, shall prosecute its writ of error to effect and answer all damages if it fail to make good its plea in the Supreme Court of the

United States, which bond, executed in duplicate, has been
 14 approved by the clerk of the court of common pleas of Cuya-
 hoga county, as authorized by the chief justice of this court;
 and one of said bonds so executed and approved in duplicate has,
 with said writ of error, been deposited in our said supreme court of
 Ohio.

In witness whereof I, Josiah B. Allen, clerk of the supreme court
 of Ohio, do hereunto set my hand and the seal of said court this —
 day of —, A. D. 1897.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk.*

15 THE LAKE SHORE AND MICHIGAN }
 Southern Railway Company, Plaintiff in Error, }
 against } Petition for Writ of
 THE STATE OF OHIO *ex Rel.* GEORGE L. LAW- }
 RENCE, Defendant in Error. } Error.

To the Honorable Jacob F. Burket, chief justice of the supreme court of the State of Ohio:

Your petitioner, The Lake Shore and Michigan Southern Railway Company, a citizen of the United States and of the State of Ohio, and having its principal place of business in said State, to your honor respectfully represents and sets forth that at the April term, A. D. 1893, of the common pleas court of Cuyahoga county, in the State of Ohio, in a case wherein said State of Ohio *ex rel.* George L. Lawrence was plaintiff and the said The Lake Shore and Michigan Southern Railway Company was defendant, a judgment was rendered by said court in favor of said relator and against your petitioner for the sum of one hundred dollars and costs.

Your petitioner prosecuted error in said cause to the circuit court of Cuyahoga county, Ohio, to reverse said judgment, but the same was affirmed by said court at the January term, 1894.

Your petitioner thereupon prosecuted error in said cause to the supreme court of Ohio to reverse said judgments, but the same were affirmed by said court at the January term, 1897.

Your petitioner further represents and states that in the rendition of said judgment by the said common pleas court and the said judgments of affirmance by the circuit and supreme courts
 16 it became and was material and necessary to the case to determine whether paragraph 3, section 8, article 1, of the Constitution of the United States, as to the regulation of commerce among the several States, is in any manner interfered with or violated by the statute of the State of Ohio mentioned in the original petition in this cause, to wit, section 3320 of the Revised Statutes of Ohio as amended April 13th, 1889, Ohio Laws, vol. 86, page 291, or by the judgment of the court below or by the judgment of affirmance by the supreme court, your petitioner claiming that it would,

and that the statute and the said judgments were and would be repugnant to and an interference with and in violation of said provisions of the Constitution of the United States, and were & would be an exercise by the State of the power to regulate commerce between the States; which power is by said constitutional provisions solely vested in Congress; but said courts below and said supreme court (the latter being the highest court in said State in which a decision of said cause can be had) held and determined that said statute and said judgment are not repugnant to and do not so interfere with and violate said constitutional provisions, and are not an exercise by the State of the power to regulate commerce between the States, and held and determined against the claim of the plaintiff in error, all of which plainly appears upon the face of the record of said cause in the supreme court, a certified transcript of which record is presented herewith.

Wherefore your petitioner asks leave to have its writ of error in this behalf, to the end that it may be determined by the Supreme Court of the United States whether the action of said courts 17 and said statute are not repugnant to and in violation of said constitutional provisions as herein set forth and as shown by the record; and plaintiff further prays for a supersedeas, and that the amount of the bond may be fixed by your honor.

THE LAKE SHORE AND MICHIGAN
SOUTHERN RAILWAY COMPANY,
By GEORGE C. GREENE,
General Counsel for said Company.

Writ of error and supersedeas allowed, as prayed for in the foregoing petition, the plaintiff in error to execute to the defendant in error a n undertaking in the sum of one thousand dollars, conditioned according to law, with sufficient surety, and approved by the clerk of the courts of Cuyahoga county, Ohio.

March 23d, 1897.

JACOB F. BURKET,
Chief Justice of the Supreme Court of Ohio.

18 [Endorsed:] 4013. L. S. & M. S. R'y Co. vs. State of Ohio
ex rel. Geo. L. Lawrence. Petition for writ of error. Filed Mar. 25, 1897, in supreme court of Ohio. J. B. Allen, clerk.

19 THE STATE OF OHIO, {
City of Columbus, }^{ss}:

In the Supreme Court of Ohio, January Term, A. D. 1897.

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company, Plaintiff in Error,
 vs.
 THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant in Error.

4013. Error to the Circuit Court of Cuyahoga County.

Ap'l 30, 1894. Petition in error and waiver of summons filed.

" " " Circuit court transcript filed.

" " " Original papers filed.

" " " Printed record and proof of service filed.

" 14, 1896. Journal entry :

" Ordered by the court that said cause be, and the same is hereby, dismissed for want of preparation."

O. B. 14, p. 534.

" 23, " Motion by plaintiff to reinstate and notice filed.

" 28, " Consent of defendant to reinstate filed.

May 5, " Journal entry :

" Motion by plaintiff to reinstate cause No. 4013 on the general docket."

" Ordered by the court that said motion be, and the same is hereby, allowed, brief of plaintiff in error to be filed by June 1 and that of defendant in error by July, 1896."

O. B. 14, p. 567.

May 18, 1896. Plaintiff's printed briefs filed & proof of service.

June 1, " " supplemental printed brief filed.

" 2, " Proof of service of plaintiff's supplemental printed briefs filed.

" 22, " Defendant's printed briefs filed.

Mar. 2, 1897. Journal entry :

" This cause came on to be heard upon the transcript of the record of the circuit court of Cuyahoga county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same hereby is, affirmed with costs. It is hereby certified that said plaintiff in error claimed in its brief and argument in this case that it was necessary and material to the case to determine whether paragraph three, section eight, of article one, of the Constitution of the United States, as to the regulation of commerce among the several States, is in any manner interfered with or violated by the statute of the State of Ohio mentioned in the petition herein or by the judgment of the court below or would be by an affirmance by this court of said judgment. The plaintiff in error claimed that said statute and

judgment of the court below and an affirmance by this court are repugnant to and in violation of said provision of the Constitution. The court below in its said judgment and this court by its affirmance of said judgment held said statute valid and adjudged against said plaintiff in error upon its defense to said action; and it is further certified that this court is the highest court in this State in which a decision of this case can be had. It is further ordered that said defendant in error recover his costs in this court expended, and that said plaintiff in error pay the costs by it made, and in default that execution issue therefor, and this cause is remanded to the court of common pleas for execution.

Ordered that a special mandate be sent the court of common pleas of Cuyahoga county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the circuit court of Cuyahoga county for entry."

O. B. 15, p. 234.

Mar. 10, 1897. Mandate issued.

" 11, " Original papers sent to clerk.

Costs.

Filing petition in error, \$5.00, paid by Estep, Dickey, Carr & Goff.

Filing motion, \$2.00, paid by Dickey, Brewer & McGowan.

This transcript, \$2.00, paid by F. J. Jerome.

21 STATE OF OHIO, } ^{ss:}
City of Columbus,

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing are all the entries in cause No. 4013, The Lake Shore & Michigan Southern Railway Company *vs.* The State of Ohio on complaint of George L. Lawrence, and that the same are truly taken and correctly copied from the records of said court, to wit, from Order Book No. 14, pages 534 and 567, and Order Book No. 15, page 234, and Minute Book No. 16, page 447.

In witness whereof I have hereunto
Seal of the Supreme Court subscribed my name and affixed the seal
of the State of Ohio. of said supreme court this twenty-third
day of March, A. D. 1897.

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

22 [Endorsed:] Supreme court of the State of Ohio. No. 4013.
The Lake Shore & Michigan Southern Railway Co. *vs.* The
State of Ohio on complaint of George L. Lawrence. Transcript of
docket and journal entries.

23

Supreme Court of Ohio.

STATE OF OHIO, }
City of Columbus, }^{ss:}

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that Exhibit A, hereto attached, is a true printed copy of the record filed April 30th, 1894, in the supreme court of Ohio, in case No. 4013, entitled The Lake Shore and Michigan Southern Railway Company, plaintiff in error, against The State of Ohio *ex rel.* Geo. L. Lawrence, defendant in error, and used by this court in the consideration of this case.

Seal of the Supreme Court of the State of Ohio. In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 1st day of April, A. D. 1897.

JOSIAH B. ALLEN, Clerk,
By JOHN P. DANA, Deputy.

24 EXHIBIT "A." Josiah B. Allen, Clerk Supreme Court of Ohio, by John P. Dana, Deputy.

4013. 16 | 447.

In the Supreme Court, State of Ohio.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, }
Plaintiff in Error,
vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, }
Defendant in Error.

Record.

Estep, Dickey, Carr & Goff, attorneys for plaintiff in error.

Filed Apr. 30, 1894, in supreme court of Ohio.

J. B. ALLEN, Clerk.

25 In the Supreme Court of the State of Ohio.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error, }
vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, } Petition in Error.
Defendant in Error.

The plaintiff in error, The Lake Shore & Michigan Southern Railway Company, says, that at the January term, A. D. 1894, of the circuit court, within and for the county of Cuyahoga, and State of Ohio, The State of Ohio, on complaint of George L. Lawrence, defendant in error, recovered a judgment by the consideration of said court, against this plaintiff in error, in an action and proceeding then pending therein, wherein this plaintiff was plain-

tiff in error, and The State of Ohio, on complaint of George L. Lawrence, was defendant in error, a transcript of the docket and journal entries whereof, is filed herewith.

Plaintiff in error says, that there is error in the said record and proceedings, in this, to wit:

1st. That said circuit court erred in affirming the judgment of the court of common pleas, which was in review in said action and proceeding, and rendering judgment against plaintiff in error therein.

2nd. That said circuit court erred in rendering a judgment in said action and proceeding, in favor of defendant in error, when it should have been rendered in favor of this plaintiff.

3rd. That said circuit court erred in the judgment rendered in said action and proceeding, because of other errors apparent upon the face of said record.

4th. That said circuit court erred because the facts found by the court of common pleas in said cause, action and proceeding, affirmatively showed that said common pleas court had no jurisdiction to render the judgment thus affirmed by said circuit court.

Plaintiff in error therefore prays, that said judgments of the circuit court, and the court of common pleas may be reversed, and that this plaintiff may be restored to all things it has lost by reason thereof.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Plaintiff in Error.

CLEVELAND, O., April 9th, 1894.

Now comes the defendant in error, and waives the issuing and service of summons in error in the above-entitled action, and enters his appearance herein.

W. H. POLHAMUS,
Attorney for Defendant in Error.

27 STATE OF OHIO, }
Cuyahoga County, } ss:

Common Pleas Court.

THE STATE OF OHIO on Relation of GEORGE L. LAWRENCE, Plaintiff, }
vs. } Petition.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Defendant.

The complainant herein says, that this cause comes into this court upon appeal from the court of Joseph S. Grannis, a justice of the peace in and for Brooklyn township, county and State aforesaid.

Complainant further says that he is a resident of the village of West Cleveland, in said Brooklyn township. That on the 9th day of October 1890, and for a long time previous thereto, said village contained more than three thousand inhabitants. That defendant

is a corporation organized and operating a certain railroad under the laws of this State, that said railroad is located in part within said village of West Cleveland. That defendant on said 9th day of October 1890, and for a long time previous thereto and ever since has caused to be run daily both ways over that part of said railroad situate within said village three and more, regular 28 trains carrying passengers. That on said 9th day of October 1890, (said day, not being Sunday,) defendant did not stop nor cause to be stopped, more than one running each way over said railroad, of its regular trains carrying passengers, within said village of West Cleveland long enough to receive or let off passengers. The complainant therefore says that by reason of the premises and by force of section 3320 of the Revised Statutes of Ohio, the defendant has forfeited and become liable to the State of Ohio in the sum of one hundred dollars.

Wherefore this complainant prays for judgment against defendant for one hundred dollars.

ALEX. HADDEN,
Prosecuting Attorney, Cuyahoga County, Ohio.

STATE OF OHIO, } ss:
Cuyahoga County, }

George L. Lawrence being first duly sworn says the facts stated and allegations in the foregoing petition contained are true as he verily believes.

GEO. L. LAWRENCE.

Sworn to and subscribed before me by the said George L. Lawrence this 2nd day of January 1891.

[SEAL.] W. H. POLHAMUS,
Notary Public.

29 STATE OF OHIO, } ss:
Cuyahoga County, }

In the Court of Common Pleas.

THE STATE OF OHIO on Relation of GEORGE }
L. LAWRENCE, Plaintiff, }
vs. } Amended Answer.
THE LAKE SHORE & MICHIGAN SOUTHERN }
RAILWAY COMPANY, Defendant. }

And now comes the above-named defendant The Lake Shore & Michigan Southern Railway Company, and for amended answer to the petition of plaintiff herein, says: That the following allegations contain- in said petition are admitted, to wit:

That this cause comes into this court on appeal. That complain-

ant is a resident of the village of West Cleveland. That this defendant is a corporation organized and operating a certain railroad under the laws of this State. That said railroad is located in part within said village of West Cleveland. That this defendant on the 9th day of October, 1890, and for a long time previous thereto and ever since, has cause to be run, daily, both ways over that part of said railroad situated within said village, three or more regular trains carrying passengers. And this defendant denies each, 30 all and singular of the other allegations in said petition contained, not herein expressly admitted.

Second. And for a further and second defense to the several matters and things set forth in the plaintiff's petition, this defendant says, that it is a railroad company, owning and operating a railroad from Chicago, in the State of Illinois, through the States of Michigan, Indiana, Ohio, Pennsylvania and New York.

That it is and was at the time of the commencement of this action and on the 9th day of October, 1890, engaged in carrying passengers and freight to and from the State of Illinois, through each of said several States, to and into and from the State of New York, and in the business of interstate commerce, both in the carriage of passengers and freight. That it did not at the time of the commencement of this action, or on the 9th day of October, A. D. 1890, run daily both ways, or either way, over said road, through the village of West Cleveland, three regular trains carrying passengers, that did not have upon them, passengers who had paid fare and were entitled to ride on said trains, going in the one direction to the city of Buffalo through the State of Pennsylvania, and those trains going in the other direction, through the State of Indiana to the city of Chicago. That the stopping of such through trains in the village of West Cleveland, was and is a serious detriment and impediment to interstate commerce in the carriage of passengers between, into and through said several States, and that the stopping of such through passenger trains in said village of West Cleveland,

would cause and would have caused great and serious detriment and damage to this defendant and to the several passengers who had thus or would thus pay their fares for through transit from the said city of Chicago to said city of Buffalo, and from said city of Buffalo to said city of Chicago, causing each of said passengers unnecessary delay and damage in passing over said route. And this defendant further says that the stopping of said through passenger trains or either of them continuously on each day, when passing through said village of West Cleveland, would have produced and would produce great and irreparable injury to this defendant and to the public generally.

Defendant further says that the supposed law and statute of the State of Ohio upon which this action is based is null and void, and repugnant and contrary to article one, section eight, of the Constitution of the United States, which confers upon Congress the power to regulate commerce among the several States; and to the states of the United States passed by virtue of such power.

Wherefore, this defendant having fully answered, prays to be hence dismissed with its costs.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Defendant.

O. G. GETZEN-DANNER,
Of Counsel for Defendant.

STATE OF OHIO, }
Cuyahoga County, }^{ss} :

Personally came M. R. Dickey, who being first duly sworn,
32 says that he is one of the attorneys for the defendant in the above-entitled cause, duly authorized in the premises, and that the facts stated and allegations contained in the foregoing amended answer are true as he verily believes.

MOSES R. DICKEY.

Signed by the said M. R. Dickey in my presence and by him sworn to before me on this 14th day of January, A. D. 1891.

C. H. GALE,
Notary Public.

[SEAL.]

33 THE STATE OF OHIO, }
Cuyahoga County, }^{ss} :

In the Court of Common Pleas.

THE STATE OF OHIO on Relation of GEORGE L. LAWRENCE, }
Plaintiff, }
vs. }
THE LAKE SHORE & MICHIGAN SOUTHERN RAILROAD COM- }
PANY, Defendant. }
Reply.

And now comes the above-named plaintiff and for reply to defendant's answer herein says, that it admits that defendant is in the management and control of a railroad, which extends from Buffalo, New York, to Chicago, Illinois, through the several States in said answer named and that it is and was on the 9th day of October, 1890, engaged in carrying passengers and freight from the one end of said road to the other. And that the trains so running through the village of West Cleveland, carried passengers who had paid their fare and were entitled to ride on said trains from the one end of said road to the other.

But it denies that the stopping of such trains in the village of West Cleveland was or would be a serious detriment or impediment to interstate commerce in the carriage of passengers into and through said several States, or a violation of any contract or agreement, between defendant and said passengers, or a violation of any 34 interstate commerce law or regulation, or that the stopping of such through passenger trains in said village of West Cleveland would cause, or would have caused, great and serious detriment and damage to defendant, or to the several passengers who

had this or would thus pay their fares for through transit from said city of Chicago to said city of Buffalo and from said city of Buffalo to said city of Chicago over said road, or that it would have caused them unnecessary delay and damage in passing over said road. And it denies that the stopping of said through passenger trains or either of them continuously on each day, when passing through said village of West Cleveland would have produced or would produce, great and irreparable injury to defendant and to the public generally or to either of them.

Wherefore plaintiff prays as in its petition.

W. B. NEFF,

Pros. Att'y,

By T. K. DISSETTE.

STATE OF OHIO, }
Cuyahoga County, } ss:

George L. Lawrence being first duly sworn says that he is the complainant in the above action and that the statements and allegations in the above reply contained are true as he believes.

GEORGE L. LAWRENCE.

Sworn to before me by the said George L. Lawrence and by him subscribed in my presence this 18th day of May, A. D. 1891.

W. H. POLHAMUS,

Notary Public.

[SEAL.]

35 THE STATE OF OHIO, }
Cuyahoga County, } ss:

In the Court of Common Pleas.

THE STATE OF OHIO on Relation of GEORGE L. }
LAWRENCE, Plaintiff, }
vs. }
THE LAKE SHORE & MICHIGAN SOUTHERN }
RAILWAY COMPANY, Defendant. } No. 38631. Motion
for a New Trial.

And now comes the defendant, The Lake Shore & Michigan Southern Railway Company, and moves the court for an order, setting aside the finding and decision and judgment of the court herein, and that the finding, decision and judgment of the court be vacated, and a new trial granted, for the following causes, to wit:

1. That the finding, decision and judgment of the court, is not sustained by sufficient evidence.
2. That the finding, decision and judgment of the court is contrary to law.
3. Error of law by the court in its conclusions of law, as applied to the facts in this case.
4. Because judgment should have been rendered in favor of this

defendant, and against the plaintiff, on the agreed statement of facts submitted to the court.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Defendant.

O. G. GETZEN-DANNER,
Of Counsel for Defendant.

36 THE STATE OF OHIO, }
Cuyahoga County, }
ss:

In the Court of Common Pleas.

(Theodore L. Lindsay; bail, \$70.00.)

THE STATE OF OHIO on Complaint of GEORGE L.
LAWRENCE, Plaintiff, }
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAIL- }
WAY COMPANY, Defendant. } Appeal by Def't.

September term, 1890.

(Common pleas No. 38631. Circuit court —.)

September term, 1890. (Dec. 5.) Transcript from the docket of J. S. Grannis, J. P., Brooklyn township filed. Judgment November 8, 1890; December 31, 1890. To court: The plaintiff has leave to file a petition by January 3rd, 1891.—Journal 107-392. January 3, 1891, petition filed; continued; January term 1891. (January 10.) Answer filed; January 14, 1891. To court: The defendant has leave to file an amended answer forthwith without prepayment of costs—Journal 108-25. January 14, 1891. Amended answer filed; continued April term, 1891, (May 2). Demand by defendant for a struck jury filed, 10.25 a. m., May 4, 1891. Certified lists mailed to attorneys with notices to strike May 9, 1891, 9.15 a. m., May 6, 1891. To court: This cause is continued at the cost of the State of Ohio for which judgment is rendered against it.—Journal 109-88. May 18, 1891, reply filed. May 9, 1891, jury struck by clerk for plaintiff by request of plaintiff's attorney. Continued September term, 1891; continued January term, 1892; continued April term, 1892; continued September term, 1892; continued January term, 1893; continued April term, 1893. April 10, 1893, motion by defendant for a new trial filed; July 25, 1893. To court: At this term to wit, on the 8th day of April, 1893, the parties by their attorneys come and this cause comes on for hearing, whereupon both parties waive the intervention of a jury and submit this cause to the court, upon the petition of plaintiff, answer of the defendant, and plaintiff's reply thereto, and an agreed statement of facts. And upon due consideration thereof, the court, being requested by the defendant to state the conclusions of fact found, separately from the conclusions of law, on the hearing of the case, finds the facts in issue as follows: That the complainant is a resident of the village of West Cleveland in

Brooklyn township, Ohio. That on the 9th day of October, 1890, and for some time prior thereto, said village contained more than 3,000 inhabitants, and that it is a municipal corporation. That defendant is a corporation organized under the laws of the States of Ohio, New York, Pennsylvania, Indiana, Michigan and Illinois, and owns and operates a railroad that is located in part within said village of West Cleveland. That defendant on the 9th day of October, 1890, and for some time prior thereto, and for some time thereafter, caused to run, daily, both ways, over that part of said railroad situated within said village, three or more regular trains carrying passengers. That on said 9th day of October, 1890, said day not being Sunday, the defendant did not stop nor caused to be stopped, more than one of its regular trains for carrying passengers running each way within said village of West Cleveland, long enough to receive or let off passengers. That said railroad so operated by defendant and passing through said village, is owned and operated by defendant from Chicago in the State of Illinois, passing through the States of Illinois, Michigan, Indiana, Ohio, Pennsylvania and New York to the city of Buffalo. That said defendant was on and prior to said 9th day of October, 1890, and has been ever since engaged in carrying passengers and freight over said railroad, passing through said village of West Cleveland to and from Chicago in the State of Illinois, and other stations in Indiana and Michigan through each of said several States to and into the States of New York, Pennsylvania and Ohio and to the city of Buffalo and from the city of Buffalo in the State of New York and other stations in Pennsylvania as aforesaid, through and into each of said several States, and to the city of Chicago and is and then was engaged in the business of interstate commerce, both in the carriage of passengers and freight from into and through said States. That said defendant did not on the 9th day of October A. D. 1890, nor shortly prior thereto, or since, up to the time of the commencement of this suit, run daily, both ways or either way, over said road through the village of West Cleveland, three regular trains nor more than one regular train each, carrying passengers, which were not engaged in interstate commerce, or that did not have upon them passengers who had paid through fare, and were entitled to ride on said trains going in the one direction from the city of Chicago to the city of Buffalo, through the States of Indiana, Ohio, and Pennsylvania and those going the other direction from the city of Buffalo through that States of Indiana, Ohio and Pennsylvania and those going the other direction from the city of Buffalo through said States to the city of Chicago. That on or about the said 9th day of October, A. D. 1890, the said defendant operated but one regular train carrying passengers each way, that was not engaged in carrying such through passengers; and said train did stop at West Cleveland aforesaid, on the day aforesaid, for a time sufficient to receive and let off passengers. The through trains that passed through West Cleveland on the 9th day of October, A. D. 1890, were train No. 1, limited express, had two baggage and express cars, one coach and

three sleepers, from New York to Chicago; passed Rockport at 1.40 a. m. Train No. 11, fast mail, had five U. S. mail cars, one coach and one sleeper from New York to Chicago, passed Rockport at 1.55 p. m. Train No. 21 had one U. S. mail car, two baggage and express cars, four coaches and one sleeper from Cleveland to Chicago; passed Rockport at 3.40 p. m. These trains all run west. Limited express train No. 4 had one baggage and express car and three sleepers from Chicago to New York, passed Rockport 2.35 a. m.

Train No. 6 had one baggage and express car, three coaches 40 and two sleepers, from Chicago to New York; passed Rockport, 1.20 a. m. Train No. 24, had one U. S. mail car, two baggage and express cars and seven coaches from Chicago to Buffalo; passed Rockport 10.02 a. m. Train No. 14, had three U. S. mail cars and one sleeper from Chieago to New York; passed Rockport 5.35 p. m. These last-mentioned trains all ran eastwardly. That the average time of delay necessarily required to stop a train of cars and sufficient time to receive and let off passengers would be three minutes, and that the number of cities and villages in the State of Ohio, containing three thousand inhabitants through which the aforesaid trains of the defendant passed on said day were thirteen, to wit: Conneaut, Ashtabula, Geneva, Painesville, Cleveland, West Cleveland, Elyria, Oberlin, Norwalk, Fremont, Sandusky, Toledo, and Bryan. The aforesaid being the facts agreed upon by and between the parties hereto, and no other or further evidence being given. And as conclusions of law the court finds that the requirements of said section 3320, Revised Statutes of Ohio as amended April 13, 1889, Ohio Laws, volume 86, page 291, are in no sense a regulation of commerce between the States. That the provision of this section is the regulation by the State of a corporate body of its own creation with reference to the domestic and local concerns of the State. That the fact that said corporation has engaged in carrying interstate passengers, and such passengers are to be found upon all of its trains which do not stop at said station, does not oust the legislative control of the State, and the said act of the

legislature of Ohio is not in derogation of section 8, article 1, of 41 the Federal Constitution, granting to Congress power to regulate commerce among the States. That if the subject-matter of section 3320 does come within the provisions of said article 8 of the Federal Constitution so that the requirements of said section may be said to regulate interstate commerce, then the subject-matter of the reguiation is one that is purely local in its character, depending entirely upon local conditions and surroundings for the determination in each case as to what constitutes suitable and proper regulation and therefore does not come under the exclusive commercial power of Congress, and as Congress has taken no action in respect to the subject-matter of this section this subject is open to control by the State, and the court finds that plaintiff is entitled to recover from the said defendant the sum of one hundred dollars. The court further finds as a conclusion of law that in the rendition of the judgment herein, it was and is necessary and material to the case to determine whether paragraph 3 section 8, article 1, of the Con-

stitution of the United States as to the regulation of commerce among the several States would be in any manner interfered with or violated by the judgment of the court herein rendered, the defendant claiming that it would; but this court as a conclusion of law, holds adversely to such claims. To each and all of which several findings of fact and conclusions of law, the defendant severally excepts and files its motion for a new trial of this cause, which motion is heard and overruled, to which ruling said defendant excepts. It is therefore considered that said plaintiff recover of said defendant said sum of one hundred dollars (\$100.00) and 42 also its costs of this suit to be taxed; judgment is rendered against the said defendant for its costs herein. To which judgment the said defendant excepts. Journal 115-381.

THE STATE — OHIO, }
Cuyahoga County, }^{ss}:

I, Levi E. Meacham, clerk of the court of common pleas, in and for said county, do hereby certify that the above is a true transcript of the docket and journal entries of said court, in the above-entitled cause, and that the said — — entered into bond, with approved sureties, conditioned to abide and perform the order and judgment of the appellate court, and to pay all moneys, costs and damages which may be required of, or awarded against — — by said appellate court.

And I also certify that the enclosed are the original papers and pleadings filed in said cause, in the said court of common pleas.

Attest my hand and the seal of said court, at Cleveland, this 31st day of July, 1893.

LEVI E. MEACHAM, Clerk,
By FRED. J. DENZLER,
Deputy Clerk.

[SEAL.] 43 THE STATE OF OHIO, }
Cuyahoga County, }^{ss}:

In the Circuit Court.

THE LAKE SHORE & MICHIGAN SOUTHERN }
RAILWAY COMPANY, Plaintiff in Error, }
vs. } No. 38631. Petition
THE STATE OF OHIO on Complaint of } in Error.
GEORGE L. LAWRENCE, Defendant in Error. }

The plaintiff in error, The Lake Shore & Michigan Southern Railway Company, says that at the April term, A. D. 1893, of the court of common pleas of Cuyahoga county, The State of Ohio, on complaint of George L. Lawrence, defendant in error, recovered a judgment by the consideration of said court, against plaintiff in error, in an action and proceeding then pending therein, wherein defendant in error was plaintiff, and plaintiff in error was defendant, a transcript of the docket and journal entries whereof is filed

herewith. Plaintiff in error says, that there is error in the said record and proceedings, in this, to wit:

1st. Said court erred in overruling the motion of plaintiff in error, for a new trial in said action and proceeding.

2nd. That the facts set forth in the petition, are not sufficient in law, to maintain the said action against plaintiff in error.

44 3rd. That said court erred in each of its conclusions of law so found by it in said action and proceeding, as appears by the record.

4th. That said judgment was given for the said defendant in error, when it ought to have been given for the said Lake Shore & Michigan Southern Railway Company.

5th. That the facts found by said court, did not entitle defendant in error to a judgment in his favor, in said action and proceeding.

6th. That the said court had no jurisdiction to render said judgment.

Plaintiff in error therefore prays, that said judgment may be reversed, and that it may be restored to all things it has lost by reason thereof.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Plaintiff in Error.

O. G. GETZEN-DANNER,
Of Counsel for Plaintiff in Error.

CLEVELAND, O., August 2nd, 1893.

Now comes the defendant in error, and waives the issuing and service of summons in error in the above-entitled action, and enters his appearance herein.

W. H. POLHAMUS,
One of the Attorneys for Defendant in Error.

45 STATE OF OHIO, }
Cuyahoga County, } ss:

In the Circuit Court.

(Com. Pleas Ex. Doc. —.)

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff, vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant. } Error to Common Pleas.

Circuit court No. 1270. Common pleas No. 38631.

August 2, 1893.—Petition in error, transcript of docket and journal entries and original papers from common pleas.

March 9, 1894.—To court: This cause came on to be heard upon the petition in error, bill of exceptions, original papers and pleadings and the transcript of the record in the court of common pleas and was argued by counsel; on consideration whereof the judg-

ment of the said court of common pleas is affirmed, there being however in the opinion of the court reasonable ground for this proceeding in error.

It is therefore considered that said defendant in error recover of said plaintiff in error his costs herein. Ordered that a special mandate be sent to the court of common pleas to carry this 46 judgment into execution. To which ruling and judgment plaintiff in error excepts. Journal, 4-150.

STATE OF OHIO, } ss:
Cuyahoga County, }

I, Levi E. Meacham, clerk of the circuit court, in and for said county, do hereby certify that the above is a true transcript of the dock- and journal entries of said court in the above-entitled cause.

And I also certify that the enclosed are the original papers and pleadings filed in said cause, in said circuit court.

Witness my hand and the seal of said court, at Cleveland, this 5th day of April, 1894.

[SEAL.]

LEVI E. MEACHAM, *Clerk*,
By FRED. J. DENZLER,
Deputy Clerk.

Endorsed on cover: Case No. 16,560. Ohio supreme court. Term No., 781. The Lake Shore & Michigan Southern Railway Company, plaintiff in error, *vs.* The State of Ohio *ex rel.* George L. Lawrence. Filed April 17, 1897.